



DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-85,019

Saliency Insight, Inc.  
F/K/A KD Paine & Partners, Inc.  
A Subsidiary of News Group International  
Berlin, New Hampshire

Notice of Negative Determination  
on Reconsideration

On April 11, 2014, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Saliency Insight, Inc., formerly known as KD Paine & Partners, Inc., a subsidiary of News Group International, Berlin, New Hampshire (subject firm). The Department's Notice of determination was published in the Federal Register on May 7, 2014 (79 FR 26268).

Workers of a firm may be eligible for worker adjustment assistance if they satisfy the criteria of subsection (a) and (b) of Section 222 of the Trade Act of 1974, as amended (the "Act"), 19 U.S.C. § 2272(a) and (b). For the Department of Labor to issue a certification for workers under Section 222(a) of the Act, 19 U.S.C. § 2272(a), the following three criteria must be met:

- (1) The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. § 2272(a)(1)) requires that a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become

totally or partially separated, or are threatened to become totally or partially separated;

- (2) The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. § 2272(a)(2)) may be satisfied in one of two ways:

(A) Increased Imports Path:

- (i) sales or production, or both, at the workers' firm must have decreased absolutely, AND
- (ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and
- (iii) the increase described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision.

(B) Shift in Production Path:

- (i) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and
  - (ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;
  - (II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
  - (III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

For the Department to issue a certification under Section 222(b) of the Act, 19 U.S.C. § 2272(b), to workers of a Supplier or a Downstream Producer, the following criteria must be met:

- (1) a significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;
- (2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who

received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. § 2272(a), and such supply or production is related to the article that was the basis for such certification; and

(3) either

- (A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or
- (B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Section 222(c) of the Act, 19 U.S.C. § 2272(c), defines the terms "Supplier" and "Downstream Producer."

The initial investigation resulted in a negative determination based on the findings that the subject firm supplies services related to media measurement and analysis and, therefore, does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Act. In order to be considered eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, the worker group seeking certification (or on whose behalf certification is being sought) must work for a "firm" or appropriate subdivision that produces an article. The definition of a firm includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court.

In the request for reconsideration, a former worker alleged that workers at the subject firm produce software and indicated that the worker group at the subject firm is similar to the worker group at Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut (TA-W-53,209; U.S. Court of International Trade case No. 04-00149), which is eligible to apply for Trade Adjustment Assistance (TAA).

In TA-W-53,209, the Department determined that articles can be either tangible or intangible, that the workers produced an article (software), that production shifted to a foreign country, and that imports of like or directly competitive articles increased following the shift in production. The Department also determined that "the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States." See TA-W-53,209 Computer Sciences Corporation, Financial Group, East Hartford, Connecticut, Notice of Revised Determination on Remand.

During the reconsideration investigation, the Department contacted the former worker to discuss the allegations, confirmed previously collected information, collected new information from the subject firm, and obtained additional

information to specifically address the allegations made by the former worker.

Information obtained during the reconsideration investigation confirmed that the workers of the subject firm provide services related to media measurement and analysis and that workers at the subject firm do not produce an article, including software. The workers use existing software for analysis and creation of reports and documents that are created incidentally to the provision of media measurement and analysis services. Consequently, the workers do not produce an article, within the meaning of the Trade Act.

Therefore, after careful review of the request for reconsideration, the Department determines that the criteria of subsection (a) and (b) of Section 222 of the Act, 19 U.S.C. § 2272(a) and (b) have not been met.

#### Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. § 2272, have not been met and, therefore, deny the petition for group eligibility of Salience Insight, Inc., formerly known as KD Paine & Partners, Inc., a subsidiary of News Group International, Berlin, New Hampshire, to apply for adjustment assistance, in accordance with Section 223 of the Act, 19 U.S.C. § 2273.

Signed in Washington, D.C. on this 4th day of June, 2014

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DEL MIN AMY CHEN  
Certifying Officer, Office of  
Trade Adjustment Assistance  
4510-FN-P

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